

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Cr. No. 18-739 MV
)	
vs.)	
)	
KEVIN VIGIL,)	
)	
Defendant.)	

MOTION FOR A PROTECTIVE ORDER

The United States respectfully moves this Court under Rule 16(d)(1) of the Federal Rules of Criminal Procedure to enter a protective order restricting access to, and redistribution of, photographs taken of Jane Doe during a February 4, 2018, examination by a Sexual Assault Nurse Examiner (“SANE”). In support of this motion, the United States sets forth the following:

1. On March 13, 2018, a federal grand jury returned an indictment charging Defendant with two counts of aggravated sexual abuse, in violation of 18 U.S.C. §§ 1153, 2241(c) and 2246(2)(A). Doc. 25. Trial in this matter is scheduled for July 22, 2019.
2. Defendant is alleged to have engaged in sexual acts with then six-year-old Jane Doe in the early hours of February 4, 2018. Soon thereafter, Jane Doe’s mother sought medical care, to include a SANE examination, which required Jane Doe to submit to close-up photographs of her vagina and surrounding areas.
3. The United States recently received photos from that SANE exam and intends to disclose the material to defense counsel; however, there is valid reason to restrict access to those photographs given Jane Doe’s obvious, compelling privacy interest.

4. The Crime Victims' Rights Act provides victims of federal offenses with the right to be treated with fairness and with respect for the victim's dignity and privacy. 18 U.S.C. § 3771 (a)(8). The statute imposes an affirmative obligation on both the Court and the prosecution to ensure this right is protected. 18 U.S.C. §§ 3771(b)(l) and (c).

5. Rule 16(d)(1) of the Federal Rules of Criminal Procedure, titled "Protective and Modifying Orders," states that "the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief."

6. The United States contacted defense counsel regarding the relief it requests through this motion and Defendant had not yet responded with his position.

7. Accordingly, given Jane Doe's privacy interest, the United States submits that there is good cause for the Court to enter a protective order with the following terms:

- a. Photographs related to Jane Doe's SANE examination (hereinafter referred to as "confidential material") received by Defendant's attorney from the United States shall be safeguarded and not be shown or otherwise provided or disclosed to individuals other than:
 - i. Defendant;
 - ii. Defendant's attorney of record;
 - iii. employees of such attorney to whom it is reasonably necessary that the material be shown for the purposes of this action; and
 - iv. experts, consultants or witnesses who are assisting in this action.

Individuals to whom confidential material is shown or otherwise provided must be provided with a copy of this protective order, and agree to be bound by its terms.

- b. Confidential material received by Defendant shall be used solely for the purposes of this action. Nothing in this protective order limits Defendant or the United States from disclosing material in this or related judicial proceedings, including in motions, at hearings, at trial, or in an appeal. However, this protective order requires that should the parties use this material in any proceeding, it should be safeguarded against view by anyone for whom it is NOT reasonably necessary to view the material.
- c. Counsel for Defendant and/or anyone properly assisting counsel shall not give any copies of the confidential material directly to Defendant. Defendant only may review these materials in the presence of counsel.
- d. Counsel for Defendant is directed to return the photographs to the U.S. Attorney's Office at the conclusion of this case.

For the foregoing reasons, the United States respectfully requests that the Court enter a protective order as to the SANE photographs.

Respectfully submitted,

JOHN C. ANDERSON
United States Attorney

Electronically filed on 2/27/2019
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I HEREBY CERTIFY that on February 27, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will cause a copy of this filing to be sent to counsel for Defendant.

/s/

KYLE T. NAYBACK
Assistant United States Attorney